

Tamarind development drilling applications

Submission Reference no: 142

Te Korowai o Ngāruahine Trust (Louise Tester)

Submitter Type: Iwi

Source: Email

Overall Notes:

Clause

Do you have the authority to make this submission on behalf of the person named on this form?

Position

Yes

Notes

On behalf of Te Korowai o Ngāruahine Trust (TKONT), we welcome the opportunity to provide a submission to the Environmental Protection Authority (EPA) on the Tamarind Taranaki Application for a Marine Consent and marine discharge consent located in the Taranaki Basin

Clause

Do you intend to have a spokesperson who will act on your behalf (e.g. a lawyer or professional advisor)?

Position

Yes

Notes

Other spokespeople may include Allie Hemara-Wahanui (Te Pouhautu) and Bev Gibson (Pou Whakarae)

Clause

Do you wish to speak to your submission at the hearing?

Position

No I/we do not wish to speak to my/our submission at the hearing

Notes

TKONT does not wish to speak to this submission.

Clause

Do you wish to receive regular updates from the EPA about the progress of this application?

Position

Yes I/we wish to receive all communications relating to this application.

Notes

Clause

What decision do you want the Board to make and why? Provide reasons in the box below.

Position

Refuse

Notes

The preference of TKONT is to not further disturb our seabed and marine environment with invasive environmentally damaging operations. See attachment for full submission.



Environmental Protection Authority
EPA Office, Level 10,
215 Lambton Quay,
Wellington

Via email: tamarind@epa.govt.nz

Rāapa, 30 Haratua, 2018

Submission: Tamarind development drilling – Application for a marine consent and marine discharge consent (EEZ100016)

Tēnā koe,

1. On behalf of Te Korowai o Ngāruahine Trust (TKONT), we welcome the opportunity to provide a submission to the Environmental Protection Authority (EPA) on the Tamarind Taranaki Application for a Marine Consent and marine discharge consent located in the Taranaki Basin.

Our Interests

2. TKONT has existing interests in the area subject to the Application, the Tui Oil Field area extends South into the kaitiaki area of Ngāruahine (just south of Ōpunake), however we recognise the role that Taranaki iwi hold as mana whenua of the area with the bulk of the Tui field within their geographical area.
3. We also note that TKONT is the post-settlement governance entity for Ngāruahine and our submissions do not preclude any of the individual hapū of Ngāruahine making their own submissions to this process.
4. Our interests in the area are first and foremost as tangata whenua with a recognised area of interest from the Waingongoro to Taungatara rivers and extending out from



that coastline – the health and wellbeing of our traditional rohe is impacted by the health of its surrounding waters.

5. Additionally, we hold fishing quota within FMA 8 and Ngāruahine currently has proceedings in the High Court and with the Office of Treaty Settlements in relation to the Marine and Coastal Area (Takutui Moana) Act 2011. Alongside the other iwi of South-Taranaki we are affected by the application.
6. The position of Ngāruahine in relation to oil and gas exploration was established in the Waitangi Tribunal Claim WAI796. We refer the committee to this report and request that the Māori Advisory Committee consider its contents and recommendations in making its own recommendations to the hearing panel.
7. In 2000 the Waitangi Tribunal recorded that Māori had legal title to petroleum in their land, prior to 1937, and that the petroleum assets should be included in the Treaty negotiations. The Crown failed to honour the findings of the tribunal. A further report was issued in 2011 highlighting how the petroleum regime was in breach of the Treaty of Waitangi. The Tribunal found flaws in the management regime including the lack of protection given to Māori rights and lands. The recommendations of the Tribunal included the establishment of a Ministerial Advisory Committee to address our concerns, the establishment of local / regional representative and decision making bodies and the allocation of Crown resources to enable effective participation in the petroleum management regime in recognition of the resource disparity that exists. Regrettably the findings of the Tribunal have not been effected and we continue to be disadvantaged and prejudiced by the Crown's petroleum regime. TKONT therefore requests that the Department re-familiarise itself with the reports and seek to implement the findings in recognition of the Crown's obligations as a Treaty partner.



Māori Relationship to the Marine Environment

8. Ngāruahine iwi share an intimate spiritual, cultural, social and historical association with the takutai moana. Many practices in the marine and coastal area represent a challenge for Māori because of the dispersment and displacement of contaminants across the whenua and into the wai. When waste enters the land, it is broken down by natural processes – wind, rain, sunlight. However, waste will follow water as it flows through the whenua. An important role of the whenua is to absorb and filter waste before it reaches waterbodies like streams, lakes and rivers. In this respect, wetlands, forests, the coastal environment and riparian margins etc., function as ‘buffer zones’, to filter out as much harmful material as possible. In this way, the whenua, coastal area and moana work together to protect the integrity of te taiao.

9. Problems arise when the capacity of these life giving systems are compromised. Whilst te taiao is compromised particularly by avoidable human activities, we exacerbate the ability of the environment to effectively buffer all of the contaminants that it is expected to receive. When left unchecked or unmoderated, the outcome is that the wellness and wellbeing of people is compromised, because of the lesser ability of the environment to sustain life.

10. Ngāruahine acknowledges that the well-being of the people is dependent on the efficacy of these natural systems and processes continuing to function, and to that end we seek for the following:
 - a. Protection – acknowledgement that the primary right holder of the marine environment is the environment itself.
 - b. Reciprocity – understanding that only from a respect for the environment can we expect for the environment to offer us, as a gift, access to its precious resources and properties.



- c. Sustaining and nurturing- in return for the gift that the environment has offered us, we have an obligation to rehabilitate it, remedy adverse effects and make gains for its survival and wellbeing.

11. The ways by which we understand the sanctity of this relationship is set out below:

Mana

12. As part of the Māori creation story, Ranginui (Sky Father) and Papatūānuku (Earth Mother) were separated by their children Tāne Mahuta (Tāne of the Forest) and his many siblings. As a result of this act, ngā roimata a Ranginui (the tears of Ranginui or rain) fell upon the earth, as the eternal expression of his grief and love for Papatūānuku. These feelings were reciprocated by Papatūānuku through the rising emotion back to Ranginui through mists and fog. For this reason, in some accounts, rain is considered tapu (sacred or pure state), only becoming wai Māori once it touches the ground. Te mana o te wai (the mana of water) then, stems largely from its direct association with these archetypal figures of Ranginui and Papatūānuku. However, upon reaching the ground, the tapu and therefore the mana of water changes as it interacts or is affected by other materials, substances or elements. From a Te Ao Māori view, the greater the change of wai māori and wai moana from its original tapu state, the more affected its mana, and therefore its efficacy, particularly in maintaining and sustaining a quality of life not just for iwi Māori, but all peoples living in Aotearoa-New Zealand.

Mauri

13. In some schools of Māori thought, for some “thing” (physical object), one (individual), group (whānau, hapū, iwi, hāpori [community]) or system (ecosystem) to have mana, it must, as a pre-requisite, have mauri. Mauri is often described as the essential quality and vitality of something, one or system. The wiriwiri (quivering hand) for example, often seen performed by members of a rōpū kapa haka Māori (Māori cultural performing group), indicates that one is fully present in the moment -



physically, mentally, emotionally and spiritually - for all intents and purpose it is a state of mauri ora, being fully alive. The same phenomena can also be observed for all water. From a te Ao Māori view, the mauri of wai māori and wai moana can be assessed as follows:

- a) *Sight*: colour and flow of the water, presence of objects, materials, silt, etc., foaming, presence of aquatic and plant and animal life;
- b) *Sound*: sound of crashing waves, water rushing over sand and rocks, hum of insect life, cries and warbling of bird song;
- c) *Taste*: taste and texture of the water;
- d) *Touch*: the viscosity, temperature and strength of water flows; and
- e) *Smell*: flinty odour of rocky rivers, rich earthy odours of riverbank and riparian environments.

14. Coupled with a body of knowledge built upon centuries of observation, working with, harvesting from, and caring for the sea, assessing the mauri of a natural resource was critical to the wellness and well-being of whānau and hapū. Without such a knowledge based on an intimate understanding of mauri, the survival of whānau, hapū and iwi would always have been in doubt.

15. These criteria combined with a body of knowledge developed over hundreds of years, continues to inform uri, whānau and hapū of the vitality, the health, the mauri of wai māori and the moana. We offer this knowledge in an effort to build knowledge and understanding about the inextricable links within nature, and how all of our actions have effect and impact.

Whakapapa

16. Whakapapa (genealogy) is the tracing of one's genealogical descent from primordial times to the present. It establishes ones biological and kinship credentials, ones affiliation to others, and ones connection to place, both spiritually and physically.



Whakapapa forms an important basis for the organisation, transmission and creation of new knowledge, through a sequential ordering of the creation of the universe. In doing, so whakapapa enables connections and inter-relationships to be made between the physical, social and spiritual spheres, the past, present and future.

17. More importantly however, it is through whakapapa, that iwi Māori understand, acknowledge and share an intimate relationship with wai māori and the moana. That relationship is based on a body of knowledge, which clearly illustrates how iwi Māori whakapapa to every aspect, manifestation and phenomena of the natural world, including wai māori and the moana, “Ko au to maona, ko te moana ko au” (I am the sea and the sea is me). It is also on the basis of this relationship that, over the centuries, an environmental ethic unique to Aotearoa has developed that of *Kaitiakitanga*.

Kaitiakitanga

18. Kaitiakitanga is a culturally based environmental ethic, which obliges tangata whenua to protect, use and sustainably manage resources from the natural environment. This approach is informed by centuries of observation, and knowledge and familiarity of the environment around us.
19. That knowledge and experience also informs the *kawa* (protocols), *tikanga* (processes) and *ture* (rules) developed to ensure the mauri of the natural world is maintained. While interrupted by colonisation, and the subsequent impacts of land loss and access to traditional mahinga kai, this body of knowledge and associated traditional practices are still exercised today by Ngāruahine uri.
20. Kaitiakitanga is our way of acknowledging the aroha the whenua, ngā awa and the moana show towards us, through the selfless provision of kai and resources.



Kaitiakitanga recognises the gift that we have been offered, and the obligations upon us to care for this gift, this taonga.

21. It is incumbent on all environmental exploiters to understand the significance of the cultural context in which they are working. Each time the Government grants a permit that is environmentally invasive, it lessens our mana, affects the extent to which we can meet our obligations to Tangaroa, undermines our kaitiakitanga, further harms our cultural identity, and reduces the mauri of our environment, impacts its waiora – something which affects us all.
22. This special relationship with the marine environment cannot be delineated by boundaries between commercial operations or iwi rohe. The ocean is a cultural site of significance for iwi, it is a taonga and Māori take seriously their role as kaitiaki of the sea. It is difficult for Māori to protect the māuri of the sea, without their rights being sufficiently respected, acknowledged and responded to as part of the EPA processes. The committee is therefore urged to recognise the significance that Māori give to the marine environment as a whole, and to consider the cumulative effects that each single operation has to the integrity of New Zealand’s marine environment.
23. Cumulative impact is particularly important in Taranaki where our region is subject to the most intensive oil and gas exploration in the country and each additional consent adds pressure to eco-systems and environments that are already subject high levels of impacts that are frequently assessed as “negligible”, “minor”, “un-noticeable” or “uncertain”.
24. It is also not wholly clear that the applicant understands the significance of the marine coastal environment to tangata whenua. In a document of over 200 pages two pages limited attention is given to acknowledging the impacts of the activities to iwi and hapū cultural values. The applicant developed a two page statement about its



perceptions of the cultural effects of the application. We acknowledge the use of the Cultural Matrix that Taranaki Iwi has used in the past to guide their concerns with applicants. The applicant sent the information to Te Kahui o Taranaki. Whilst Taranaki Iwi is mana whenua, TKONT closely borders this activity and is somewhat surprised to not have received this information also. Given the emphasis put on iwi impacts within the EEZ legislation we would question whether this is anywhere near a level to be considered sufficient. TKONT is therefore somewhat surprised that there is no Cultural Impact Statement given the resources at the applicant's disposal and its investment into other parts of the impact assessment.

25. The applicant cites an extensive list of stakeholder engagement, however the bulk of the engagements relate to the sending of an email or communication. Whilst TKONT had the opportunity to meet with Tamarind, after requesting a hui, this meeting simply provided a high level overview of the application, we would not term this as consultation.

Te Tiriti o Waitangi

26. Māori have a unique relationship enshrined in Te Tiriti o Waitangi, and the decisions and determinations made by the EPA Committee in furtherance of the Act affect, and potentially limit the ability of iwi to have their treaty obligations met. TKONT therefore suggests that it is incumbent on the committee to undertake the application process in line with Te Tiriti o Waitangi. We do not feel that the obligations of partnership, protection and participation have been sufficiently met.

27. Section 12 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012(the Act) states:

In order to recognise and respect the Crown's responsibility to give effect to the principles of the Treaty of Waitangi for the purposes of this Act, —

(a) section 18 (which relates to the function of the Māori Advisory Committee) provides for the Māori Advisory Committee to advise the Environmental Protection Authority so that decisions made under this Act may be informed by a Māori perspective; and



(b) section 32 requires the Minister to establish and use a process that gives iwi adequate time and opportunity to comment on the subject matter of proposed regulations; and

(c) sections 33 and 59, respectively, require the Minister and the EPA to take into account the effects of activities on existing interests; and

(d) section 45 requires the Environmental Protection Authority to notify iwi authorities, customary marine title groups, and protected customary rights groups directly of consent applications that may affect them.

28. It is not clear what role the Māori Advisory Committee has played to date, in advising the EPA Committee about the Māori cultural perspective as it relates to the management and protection of these coastal waters, noting the increasing number of applications within Taranaki. Whilst the Māori Advisory Committee works on behalf of the Authority, we propose that the Committee has an obligation to understand the unique Taranaki landscape and to advocate on our behalf in regards to the cumulative effects that arise from the increasing number of applications in these water. In each application that we receive there is skirt attention given by the applicants to truly understanding their Treaty obligations and what it means to acknowledge and respond to the cultural issues of concern raised by iwi and hapū.

29. The obligation of the Committee under the Act is to give iwi adequate time and opportunity to comment on the matters set out in the application. TKONT does not consider 28 days an adequate timeframe for iwi to be able to successfully digest and understand several hundreds of pages of documents, and provide a robust and substantive response. The applicant has had the luxury of time, a wealth of expertise and skill and an extensive resource to support its development of the application. The same is not true of iwi, thus the process represents an unfair power imbalance towards the applicant. The burden of proof seems to be placed upon us, yet insufficient resourcing or support is given to iwi in furtherance of our concerns.

Effects of the Activity on the Coastal Marine Environment

30. Tamarind is already operating in our marine environment, thus the activity proposes an extension of their current exploration. Because the operation is already in place



there is a presumption that an extension of activity will have no less than a minor effect. Within the application, Tamarind has set out a number of areas where the proposed activity may have an effect on the environment, although its assessment considers them to be small or negligible. The considerations, which are perceived to be “small” or “negligible” all considered in isolation. If we are to truly consider the mauri and waiora of the waters, a mātauranga or eco-system based approach must be applied where effects are considered holistically. TKONT does not consider that the statement about cumulative impacts sufficiently addresses the harms that have occurred to the marine environment since the commencement of the activities, nor the cumulative impacts from the on-going activity.

31. The specific concerns of TKONT are set out below:

a) *The loss of marine habitat because of the extended drilling activities*

There is likely to be a change in the abundance and diversity of some macro benthic communities. It is not clear what the cumulative effects of further drilling and exploration will have on the marine habitats and associated species. In the absence of evidence to the contrary a precautionary approach should be applied.

b) *Contamination because of the toxicity of waste materials*

It is unlikely that all of the waste materials will be adequately dispersed by the ocean, and thus their ongoing presence will have a negative effective on marine life and the associated habitats. Increased toxicity of the waters could adversely the marine ecosystem, and may result in a long term degradation of the marine environment.

c) *Seabed disturbance*

The extended activities will create enhanced disturbance of the seabed, which will affect marine organisms. We are concerned that this extra concentration of invasive activity will affect other marine mammal species in terms of the breeding and feeding grounds and migration pathways. The fragility of our seabed is a very real concern for



us. We are uncertain as to whether the proposed mitigations will reduce the negative, adverse effects and we ask the Authority to conduct more investigation into this area.

d) Increased turbidity of the water around the operations

A reduction of light intensity, because of an accumulation of drilling wastes is likely to affect photosynthesis, particularly marine life and marine mammals. Increased turbidity of water is also likely to affect sea birds ability to capture food from the waters. The evidence provided does not support a negligible impact.

e) Effects of noise on marine mammals

The South Taranaki coast is present to a large number of mammal species at particular times of the year. The impact assessment is light on evidence that demonstrates that noise from the operations will have little or no effect on the marine mammals presents, in terms of either their behaviours or their life support systems. However, there is a growing body of evidence which highlights the significant harmful effect that noise can have on marine mammal populations.

We take this opportunity to highlight the recent stranding of 12 sperm whales in May 2018, just South of the application area at Kaupokonui. Whilst it is too early to unequivocally know what caused the death of these whales, TKONT understands that it is important for the scientists to take tissue samples and undertake necessary investigations within 24 hours so they may ascertain if there was any harm to auditory processes among other things. Strandings of this scale alert us to the risks that increasing activity is causing to our fish, marine mammals and other marine species. Whilst the scale of this event is rare, strandings around the South Taranaki blight are not uncommon, and we are increasingly questioning how the activities and health of our moana because of invasive practices is affecting our marine mammal species.



f) *Effects on marine mammals*

The South Taranaki coastal environment is a habitat for some endangered marine mammals, and all efforts should be made to protect these species (International Union for the Conservation of Nature – Antarctic Blue Whale and Pygmy Blue Whale). It is not clear what effects the operations will have on these endangered species, and further research, including marine mammal surveys are required to understand the effects of drilling / exploration activities on marine mammal life. We note the application is one for an existing use and the paucity of activity data should automatically preclude a conclusion of negligible impact. More effort needs to be placed into this area.

The IA states, “the Greater Taranaki region is also known to be a migratory pathway for some marine mammals, however these are poorly understood and it was considered unlikely that many of the species present in the region are never or rarely found in the application area” (4.3.7). The stranding of 12 sperm whales commencing at the border of the permitted area, along five kms of coast (to Kaupokonui) serves as evidence that this statement is not correct. TKONT, Ngāti Tū and Ngāti Haua are very clear and strong in their assertion that the standing of an unprecedented number of whales was a sign and a call to recognise the negative effects that a summer of seismic testing and climate vulnerability and further impending exploration activities are having on the South Taranaki area.

We also refer the applicant to the extensive evidence given in regards to the TTRL seabed mining application, including that of Torres which robustly challenged the assertion that there would be little effect on marine mammals. It was clear from this process that marine mammals are affected by commercial activities in our marine environment, and the paucity of understanding is due to the inadequacy of the



research evidence provided by the applicants, whose evidence, if provided to the contrary would compromise their commercial position.

g) *Impact on commercial fishing operations*

It is not clear the extent to which the activities affect the abundance of fish populations and diversity of fish species. TKONT wishes to understand the extent to which the activities could affect the fishing interests and access to the fishery quota derived from the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. More effort needs to be placed into this area.

h) *Impact on customary fishing rights*

We also draw to the attention of the Committee our concerns about the on-going sustainability of and access to customary fishing grounds and mahinga kai and the quality of the kaimoana. We also emphasise that iwi and hapū are reporting that the quality and quantity of kaimoana is decreasing. We cannot continue to ignore the lived experiences of Māori in regards to their cultural and customary rights.

i) *Spills from vessels and as a result of drilling*

Whilst TKONT acknowledge that the likelihood of a spill may be small, the effects would be so great that they necessitate a serious consideration. Depending on the flow of the tide and weather patterns there is a high likelihood that the Ngāruahine marine and coastal environment would be affected, as shown by figure 7.4. The desolation of the marine environment would be catastrophic, and the effects would be felt many generations along the coast. A spill would contaminate and affect the abundance of fish stocks, affect our commercial fishing operations, and access to kaimoana gathering sites, and other sacred grounds. A spill could also affect human health. We remain concerned about our exposure and vulnerability to such an event.

The IA also recognises the limited information that it has in respect of deck drainage, and the applicant seeks to address this as a condition of consent. With the lack of



information the applicant cannot claim, with certainty that the marine environment will be subject to a small or negligible impact. Too often applicants request that they be permitted to supply additional information about hazardous impacts as a condition of consent. TKONT proposes that the supply of this information must inform the decision making process prior to any consent or permit being issued.

Applicant's obligations as an environmental exploiter

32. New Zealand's regulatory systems recognises that some commercial exploitation of natural resources may occur but this is not a carte blanche and as part of the social contracts with other New Zealand residents, corporates who undertake these activities must accept some accompanying obligations and restrictions on operations.
33. Section 59(2)(d) of the Act requires the EPA to consider "the importance of protecting the biological diversity and integrity of marine species, ecosystems, and processes" and at (e) "the importance of protecting rare and vulnerable ecosystems and the habitats of threatened species." It is not the obligation of Tamarind alone to carry the weight of this obligation, but it does have a role to play.
34. The māuri and waiora of the water is complex, and the cumulative effects of each aspect of the operations negatively affect the marine species and the associated ecosystems. Operators and the EPA need to be more cognisant and responsive to this as they conduct their commercial operations. Moreover, if they wish to take their environmental responsibilities seriously, they would be encouraged to go beyond the bottom line required by the legislations, and consider actions and investments that can restore the environment. Tamarind needs to address the way in which it currently meets its social contract obligations with the Taranaki community and in particular the Taranaki eco-system.



Conditions

35. The preference of TKONT is to not further disturb our seabed and marine environment with invasive environmentally damaging operations; however, we acknowledge that the wells are already in place and that the operations are on-going. On this basis, we determine that despite our strong position about the adverse effects of off-shore oil and gas exploration to Māori's cultural interests and role as kaitiaki, it is highly unlikely the government would allow the current application to be declined. On this basis we request that the consent to be subject to the following conditions:

- a) Tamarind Taranaki develop an Engagement Agreement with Ngāruahine iwi and hapū who identify as having an interest in this application, for the reasons stated in this submission.
- b) The applicant's spill management plan shall be revised with the involvement of iwi and hapū, and engagement protocols that include TKONT are devised accordingly (noting that spill modelling clearly shows that Ngāruahine are likely to be most adversely affected).
- c) All structures that are placed on the sea bed are removed at the cessation of their use.
- d) Wells are plugged and abandoned at the end of the consent period, and in consultation with iwi and hapū.
- e) The applicant shall develop and implement a noise monitoring programme to understand the effect of marine species and seek to deploy mitigation methods on the operation that reduce noise. TKONT are kept fully informed about this work, noting the close proximity to the activities to our rohe.
- f) The consent holder agree to fund, over the course of the consent period, marine mammal and fish population surveys to robustly assess the direct, indirect and cumulative impacts of the programme on potentially affected marine species.
- g) The consent holder shall develop and introduce a comprehensive 5 year post-activity monitoring programme.



- h) The applicant, as a voluntary condition, agrees to invest in environmental action within Taranaki that can support the restoration and improvement to the waiora of the marine and coastal environment.
- i) The applicant makes a commitment to all of its senior management team and all staff involved in Tui operations undertaking cultural training to develop an understanding of a Te Āo Māori viewpoint as it relates to the marine and coastal environment and be able to demonstrate to iwi how this is embedded into operations

36. TKONT does not wish to speak to this submission.

Naku iti noa, nā

Louise Tester (PhD)
Kairangahau Matua

cc Tamarind Taranaki Ltd, tamarinddevelopment@tamarindresources.com
Te Kahui o Taranaki